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**Sent:** 8/13/2020 7:30:51 PM  
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**Subject:** NEPA and the 404(b)(1) Guidelines

Patty

# Ex. 5 AC/DP

Let me know if you have any questions.

Thanks, Palmer

## **40 CFR 230.10(a)(4)**

For actions subject to NEPA, where the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under this paragraph or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.

## **Preamble to 404(b)(1) Guidelines - 45 FR 85340 (December 24, 1980)**

"Section 230.10(a)(4) recognizes that the range of alternatives considered in NEPA documents will be sufficient for section 404 purposes, where the Corps is the permitting authority. (However, a greater level of detail may be needed in particular cases to be adequate for the 404(b)(1) Guidelines analysis.) This distinction between the Corps and State permitting authorities is based on the fact that it is the Corps' policy, in carrying out its own NEPA responsibilities, to supplement ( or require a supplement to) a lead agency's environmental assessment or impact statement where such document does not contain sufficient information. State permitting agencies, on the other hand, are not subject to NEPA in this manner."

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